



ఆంధ్రప్రదేశ్ రాజపత్రము
THE ANDHRA PRADESH GAZETTE
PUBLISHED BY AUTHORITY

W.No.16

AMARAVATI, FRIDAY, APRIL 19, 2024

G.50

PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

--X--

NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

**IN THE COURT OF THE ADDITIONAL CIVIL
JUDGE (SENIOR DIVISION)
TENALI**

**SUITS - GUNTUR DISTRICT - COURT ORDER'S IN CERTAIN INSOLVENCY
PETITIONS IN SEVERAL I.P. Nos. -**

Ref:- Hon'ble Addl Civil judge (Senior Division) Tenali, I.P. No.07/2022,
Dt:01.03.2024, I.P. No.08/2022, Dt:01.03.2024, I.P. No.09/2022,
Dt:01.03.2024, I.P. No.13/2022, Dt:01.03.2024, I.P. No.14/2022,
Dt:01.03.2024, I.P. No.26/2019, Dt:06.03.2024, I.P. No.49/2021,
Dt:07.03.2024.

Friday, this the 1st day of March, 2024

I.P.No.07 of 2022

Between:

Mallemoggala Hanumantha Rao, S/o.Subrahmanyam, aged about 59 years, Hindu, Business and residing at H.No.14-29-25, Ravivari Street, 3rd lane, Morrispet, Tenali – 2, Tenali JCJC.

....**Petitioner**

And

1. Tadiparthi Srirama Murthy, S/o.Nagendram, aged about 50 years, Hindu, Business – Bhavani Cosmetics, H.No.7-28-86, Anjaneyapantulu Street, Ganganammampet, Tenali, Tenali JCJC.

2. Tadiparthi Sankara Rao, S/o.Nagendram, aged about 58 years, Hindu, Business, r/o.H.No.40-5/4-6, Block No.3, Flat No.322, Smitha Apartments, Venkateswarapuram, Vijayawada, Vijayawada JCJC.

3. Tadiparthi Venkata Gopal S/o.Nagendram, aged about 52 years, Hindu, Business, R/o.H.No.14-10-21, Sivalayam Street, Morrispet, Tenali – 522 202.

....**Respondents**

This petition came before me on 26.02.2024 for hearing in the presence of Sri G.Rambabu garu, Advocate for the Petitioner and Sri G.Jayaramakrishna garu, Advocate for the respondent 2 and 3 and respondent No.1 remained exparte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

:: ORDER ::

1. This petition is filed by the petitioner against the respondents under Section 6(ib)(if) and 9 of Provincial Insolvency Act a) to set aside the registered sale deed 4079/2021 of Tenali SRO, dated 17.09.2021 executed by 1st respondent in favour of respondents 2 and 3 in respect of the petition schedule property b) to adjudicate the 1st respondent as insolvent and vest the petition schedule property in official receiver for administration and costs of the petition.

2. The case of the petitioner and the respondent in a narrow compass which is as follows:

That the petitioner, by name Mallemogalla Hanumantha Rao states in the petition that the 1st respondent borrowed an amount of Rs.2,00,000/- on 23.07.2021 from him. Evidencing the payment, he executed promissory note on the same day in his favour. In spite of several requests, he did not choose to pay the amount. He came to learn that the first respondent executed a nominal registered sale deed dated 17.09.2021 in favour of the 2nd and 3rd respondent in order to avoid his debt. Therefore, the petition be allowed.

3. Refuting the averments made in the petition, the 1st and 2nd respondent filed counter and interalia maintains that they are the bonafide purchasers for consideration. Therefore, this petition be dismissed.

4. Basing on the above factual score the following debatable point that germane for consideration is :

1) Whether the 1st respondent committed an act of insolvency and thus, she is declared as an insolvent ?

2) Whether the petition schedule property can be given to the custody of the Officer Receiver, Guntur for administration ?

3) Whether the alienation covered under the sale deed dated 17.09.2021 is liable to be set aside ?

4) To what relief ?

05. That the petitioner, Sri Mallemoggala Hanumantha Rao filed proof affidavit in lieu of chief examination and reiterated by and large all the averments made in the petition and in order to buttress his contention got himself examined as P.W.1, and got Ex.P1 to P5 marked. The 2nd respondent in order to fortify his contention filed proof affidavit and got himself examined as RW1 and got Ex.R1 to R5 marked. 3rd respondent got himself examined as RW2 and nothing was marked on his behalf. After receiving summons, R1 did not make appearance and consequently, he was set exparte.

06. On the aforementioned evidential backdrop, it is the larger contention of the learned counsel for the petitioner, Sri G.Ramababu garu that when the 1st respondent was badly tide up with the finance, PW.1 extended his helping hand by parting with the amount covered under Ex.P1 promissory note dated

01.02.2020 in order to ease himself off from the financial exigencies, however, the 1st respondent has no iota of gratitude and made PW.1 to land in litigation. It is the jurisprudential justification that admission dispenses with the proof and admission is the waiver of proof. R1 filed IP.No.68/2022 on the file of this Court, wherein he admits that he borrowed the amount from PW1. P.W.1 is not aware whether R1 has land ad-measuring 115 square yards. It is mentioned in the petition covered under Ex.R4 that the aforementioned property is under mortgage. In such a case, how does P.W.1 recover the amount covered under Ex.P1 from R1. The mortgage bank has fair semblance of right over 115 square yards of site. The mindset of R1 is the deadly mindset, and in order to avoid the legitimate debt of PW1, he entertained criminal desire in order to screen the petition schedule property. As a part of his plan, he thoughtfully designed and carefully crafted nominal and sham sale deed covered under Ex.P2 in favour of R2 and R3 who are his own brothers. Merely because, there is a reference with respect to the payment of consideration by way of cheques, no presumption would prevail that Ex.P2 is a document of highest integrity. Ex.P2 is the void document and the court cannot be the venue to enforce the void documents. Therefore, giving stamp of approval to the case of the petitioner is sustainable in law.

07. Resisting the arguments, it is vehemently canvased by the learned counsel for the respondents 2 and 3, Sri G.Jayaramakrishna garu that R1 is none else than the brother of R2 and R3. R1 to R3 and their sisters got their shares individualized with respect to their ancestral properties covered under Ex.P5-partition deed dated 17.09.2021. During partition, 'A' schedule property mentioned therein fell to the share of R1, while 'B' schedule property fell to the share of R2 and R3. While the things stood thus, R1 alienated an extent of 99.6 square yards to R2 and R3 by means of registered sale deed covered under Ex.P2 for a valuable consideration. The recitals in Ex.P2 vividly demonstrate in unmistakable terms that Ex.P2 is supported by valid consideration. Therefore, the plea of P.W.1 that Ex.P2 is devoid of cash consideration is palpably false and no iota of truth in it. Besides the aforementioned property, R1 has land ad-measuring 115 square yards and which is the valuable property and the petitioner has profound knowledge regarding its existence. It is well neigh settled that when other properties are available for recovery of amount, the petition under Section 9 of Provincial Insolvency of Act is not maintainable. R2 and R3 are the bonafide purchasers for consideration and not a malafide purchasers. P.W.1 has

immense knowledge regarding the development agreement and the construction of permanent structures in the petition schedule property covered under Ex.R1. Therefore, the petition sans any merit and it is liable to be dismissed.

Point :

08. Now, I am setting forth the scope of controversy under different heads which are stated below.

Is there any pressing reason which holds back R1 not to get into the witness box to testify about the payment of consideration covered under Ex.P2 sale deed dated 17.09.2021 to R2 to R3 ? and his absention into the witness box, the presumption gets activated that R1 to R3 put up a collective front and pressed into service Ex.P2 in order to avoid the debt covered under the promissory note covered under Ex.P1 ?

09. In this litigious backdrop, it is profitable for me to revisit the judgment of Hon'ble Supreme Court reported in **AIR 1999 SC 1411 in between Vidyadhar v. Manikrao and others**. The principle of law which could culled out from the aforementioned judgment is that when the party to the proceedings does not enter into the witness box to testify the facts which are asserted in the pleadings, the adverse inference comes into play that his/her case is not having any merit.

Now, the case on hand got to be tested on the aforementioned jurisprudential guidance. The 1st respondent received the notice and did not make appearance into the court and consequently, he was set exparte. It is the rule of essential justice that when the party to the lis obstructs or blocks such evidence and adopts a devise to withhold the material evidence from whom the case of the prosecution gets unfolded, the presumption comes into operation that purposefully the witness is withheld so that the truth would get exposed. Therefore, the absence of R1 into the witness box casts bad reflection upon the case propounded by R2 and R3.

Whether not mentioning the details of 115 sq.yards of site stands in the name of R1 in Ex.R4 B- schedule appended to the petition suggests that the mind set of R1 is a mischievous mind set ?

10. In this context, I feel it relevant to reproduce the averments made in para 5 of the petition covered under Ex.R4. Para 5 goes on to disclose that **'The petitioner have not alienated any of his properties there**

months prior to filing of this petition, except the house site an extent of 115 sq.yards located at Autonagar, Tenali which was mortgaged by the petitioner into Kakateeya Bank, Tenali and the said bank hold by the said site. The petitioner has not filed any similar petition in any court previously. The respondents threatening the petitioner to discharge his debts with consequences.' However, B-schedule as appended to the petition is blissfully silent about the location of property and its boundaries. In this regard, no plausible explanation was emanated from the side of RW1 and RW2

Whether the intention of R1 in alienating the petition schedule property in favour of RW1 and RW2 covered under Ex.P2 sale deed dated 17.09.2021 is honourable or he entertained criminal desire in order to defeat the legitimate debt of the petitioner covered under the promissory note dated 01.02.2020, and if so, his case comes within the four corners of Section 53 of the Transfer of Property Act ?

11. As noticed in essence, it is the case of the RW1 and RW2 that they purchased the property covered under Ex.P2 sale deed from his brother i.e., R1 for a valuable consideration and Ex.P2 in vivid terms demonstrates the payment of consideration.

Now, the aforementioned facts are to be put on test on the basis of the material forthcame from the cross examination of RW1.

Question and answers from the testimony of RW1 :

Q.1. Whether it is recited in Ex.P4 with respect to the easementary rights of R1 ?

Ans. I have no idea.

Q.2. Whether it is recited in Ex.P4 that you and R3 have easementary rights ?

Ans. Yes.

Q.3. Are you aware who are the attestors covered under Ex.P4 ?

Ans. I am not aware.

Q.4. Are you aware the debts of R1 on the date of execution of Ex.P4 partition deed ?

Ans. I am not aware.

Q.5. Whether the attestors covered under Ex.P4 and the attestors covered under Ex.P1 are one and the same ?

Ans. Yes.

Certain facts are incapable of direct proof and their existence can be inferred from the circumstances or from the proved facts or from the relevance or from the connection or from the coincidence. The presumptive evidence as well has higher probative value on par with the other modes of evidence. In the case on hand, Ex.P2 and P4 are executed on the same day without there being any gap of time. RW1 and RW2 have got ample knowledge that R1 is heavily indebted to others and the creditors are pressing for the payment of amount. In such a case, how can I assume or presume that RW2 and RW3 are the bonafide purchasers for consideration. It is proverbial that the witnesses may tell lie, but the circumstances do not and they speak as it is. It appears that RW1 has been making hectic efforts to screen the petition schedule property from being sold in the execution of decree which is passed in favour of PW1 covered under Ex.P3. Anticipating the litigation, R1 alienated the property in favour of RW1 and RW2 covered under Ex.P2 sale deed. Therefore, from these attended circumstances, the conclusion is irresistible that the transaction covered under Ex.P2 is a fraudulent transfer and it is hit by Section 53 the Transfer of Property Act and R1 committed an act of insolvency.

Whether RW1 and RW2 produced any substantive competent proof to show that R1 owns and possesses land admeasuring 115 sq.yards ?

12. The cardinal rule of law of evidence is that in all cases best evidence has to be produced, production of best evidence is the rule and the proof never fall short of excellence in standard. The evidence is the instrument through which the court gets convinced regarding the existence or non-existence of fact-in-issue. In the matter at hand, RW1 and RW3 did not produce any positive and dependable proof to show that R1 has land admeasuring 115 sq.yards situated in Autonagar, Tenali.

13. From the aforementioned premised reasons, the situation which is obtained is that RW1 alienated the property in favour of R2 and R3 with a criminal design to avoid the debt of PW1. Thus, the case of R1 falls within the fold of Section 6 of the Provincial Insolvency Act.

14. In the result, this petition bears merit and accordingly, it is allowed by adjudicating the first respondent as an Insolvent. The period of discharge is one year from the date of this Order. The petitioner is at liberty to move an application after compliance of Sec.45 to 50 and 54-A of the Provincial Insolvency Act to annul the transfer of immovable property under Sec.53 and 54 or 4 of the Said Act. The petition schedule property is vested with the receiver. The office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by Steno, corrected and pronounced by me in the open Court, this the 1st day of March, 2024)

SHAIK ABDUL SHAREEF,

*Addl. Civil Judge (Senior Division,
Tenali.*

Appendix of Evidence
Witnesses Examined

For Petitioner:

P.W.1 -Malleoggala Hanumantha Rao
P.W.2 - Tanneeru Ravi Teja

For Respondent:

R.W.1 - Tadiparthi Sankara Rao
R.W.2 - Tadiparthi Venkata Gopal

Exhibits Marked

For Petitioner:

Ex.P1 is promissory note executed by 1st respondent in favour of PW1 dated 01.02.2020 for Rs.1,00,000/-.
Ex.P2 is certified copy of sale deed dated 17.09.2021 executed by R1 in favour of respondent No.2 and 3.
Ex.P3 is Notice received by PW1 in I.P.68/2022 filed by respondent No.1.
Ex.P4 is served copy of petition in I.P.68/2022 on the file of this Court.
Ex.P5 is the partition deed dated 17.09.2021.

For Respondents:

Ex.R1 is the certified copy of the registered development agreement-cum-GPA executed in between Tadiparthi Sankara Rao, Tadiparthi Venkata Gopal, Grandi Visweswara Rao, Gaddipati Omprakash.
Ex.R2 is the SBI bank statement of the 2nd respondent dated 25.07.2022.
Ex.R3 is the Bank statement of HDFC Bank, Tenali pertaining to 2rd respondent dated 25.07.2022.
Ex.R4 is the certified copy of the petition in I.P.68/2022.
Ex.R5 is the certified copy of the registered sale deed dated 20.05.2009 executed by Vaka China Venkateswarlu in favour of Tadiparthi Sri Ram Murthy.

SHAIK ABDUL SHAREEF,

*Addl. Civil Judge (Senior Division,
Tenali.*

[Dis No.275.

In the Court of the Hon'ble Addl. Senior Civil Judge

TENALI

Cr. I.P.No. 7/2022

~~Sax~~ Malleemoggala Hanumantha Rao .. Petitioner

Vs.

Tadiparthi Sri Rama Murthy and
others .. Respondents

Schedule filed on behalf of the Petitioner.

Guntur District, Tenali Regn. Dist. Tenali S.K.O.
Tenali Municipal Town Survey, 2nd Ward, 12th block,
T.S.No.360 - 0-06 cents, bounded by --

East: Bandi Haranadh property abutting the
property boundary wall

South: Tadiparthi Sukumar property abutting
this property boundary wall

West: Property of Respondents 2 and 3

North: Tadiparthi SriVithal boundary wall

Within these boundaries, an extent of 99-16 (99-16)
sq.yds. or 82-90 Sq.mts. of residential site with
constructions, etc. therein, with all easementary
rights, etc.

*

Advocate for Petitioner.

Petitioner

I do hereby declare that the facts stated
above are true to the best of my knowledge, infor-
mation and belief.

Tenali,

D/15-12-2021.

*

Petitioner.

Attached To deace

(Signature)
ASCO

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE (SENIOR DIVISION)
TENALI**

Friday, this the 1st day of March, 2024

I.P.No.08 of 2022

Between:

Movvala Siva Narayana Murthy, S/o.Ramaiah, aged about 60 years, Hindu, Business and residing at Sithara Apartments, Nazerpet, Tenali, Tenali JCJC.

....**Petitioner**

And

1. Tadiparthi Srirama Murthy S/o.Nagendram, aged about 50 years, Hindu, Business - Bhavani Cosmetics, H.No.7-28-86, Anjaneyapantulu Street, Ganganammamet, Tenali JCJC.
2. Tadiparthi Sankara Rao, S/o.Nagendram, aged about 56 years, Hindu, Business, R/o.H.No.40-5/4-6, Block No.3, Flat No.322, Smitha Apartments, Venkateswarapuram, Vijayawada. Vijayawada JCJC.
3. Tadiparthi Venkata Gopal S/o.Nagendram, aged about 52 years, Hindu, Business, R/o.H.No.14-10-21, Sivalayam Street, Morrispet, Tenali, Tenali JCJC.

....**Respondents**

This petition came before me on 26.02.2024 for hearing in the presence of Sri Gaddipati Rambabu garu, Advocate for the Petitioner and Sri G.Jaya Ramakrishna garu, Advocate for the respondents 2 and 3 and respondent No.1 remained exparte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

:: ORDER ::

1. This petition is filed by the petitioner against the respondents for : a) to set aside the registered sale deed No.4079/2021 Tenali SRO, dated 17.09.2021 executed by 1st respondent in favour of respondents 2 and 3 in respect of the schedule property, b) to adjudicate the 1st respondent as insolvent and vest the petition schedule property in official receiver for administration and costs of the petition.

2. **The case of the petitioner and the respondent in a narrow compass which is as follows:**

That the petitioner, by name Movvala Siva Narayana Murthy states in the petition that the 1st respondent borrowed an amount of Rs.1,00,000/- on 16.10.2019 from him. Evidencing the payment, he executed promissory note on the same day in his favour. In spite of several requests, he did not choose

to pay the amount. He came to learn that the first respondent executed a nominal registered sale deed dated 17.09.2021 in favour of the 2nd and 3rd respondents in order to avoid his debt. Therefore, the petition be allowed.

3. Refuting the averments made in the petition, the 2nd and 3rd respondent filed counter and interalia maintains that they are the bonafide purchasers for consideration. Therefore, this petition be dismissed.

4. Basing on the above factual score the following debatable point that germane for consideration is :

1) Whether the 1st respondent committed an act of insolvency and thus, he is declared as an insolvent ?

2) Whether the petition schedule property can be given to the custody of the Officer Receiver, Guntur for administration ?

3) Whether the alienation covered under the sale deed dated 17.09.2021 is liable to be set aside ?

4) To what relief ?

05. That the petitioner, Sri Muvvala Sivanarayana Murthy filed proof affidavit in lieu of chief examination and reiterated by and large all the averments made in the petition and in order to buttress his contention got himself examined as P.W.1, and got Ex.P1 to P4 marked. The 2nd respondent in order to fortify his contention filed proof affidavit and got herself examined as RW1 and got Ex.R1 to R6 marked. R3 filed proof affidavit and got himself examined as RW2 and nothing was marked on his behalf. R1 is heard exparte.

06. On the aforementioned evidential backdrop, it is the larger contention of the learned counsel for the petitioner, Sri. G.Rambabu garu that when the 1st respondent was badly tide up with the finance, PW.1 extended his helping hand by parting with the amount covered under promissory note dated 16.10.2019 in order to ease himself off from the financial exigencies, however the 1st respondent has no iota of gratitude and made PW.1 to land in litigation. It is the jurisprudential justification that admission dispenses with the proof and admission is the waiver of proof. R1 filed IP.No.68/2022 on the file of this Court covered under Ex.R5, wherein, he admits that he borrowed the amount from PW1. P.W.1 is not aware whether R1 has land ad-measuring

115 square yards. It is mentioned in the petition covered under Ex.R5 that the aforementioned property is under mortgage. In such a case, how does P.W.1 recover the amount covered under Ex.P1 from R1. The mortgage bank has fair semblance of right over 115 square yards of site. The mindset of R1 is the deadly mindset, and in order to avoid the legitimate debt of PW1, he entertained criminal desire in order to screen the petition schedule property. As a part of his plan, he thoughtfully designed and carefully crafted nominal and sham sale deed covered under Ex.P1 in favour of R2 and R3 who are his own brothers. Merely because, there is a reference with respect to the payment of consideration by way of cheques, no presumption would prevail that Ex.P1 is a document of highest integrity. Ex.P1 is the void document and the court cannot be the venue to enforce the void documents. Therefore, giving stamp of approval to the case of the petitioner is sustainable in law.

07. Resisting the arguments, it is vehemently canvased by the learned counsel for the respondents 2 and 3, Sri G.Jayarama Krishna garu that R1 is none else than the brother of R2 and R3. R1 to R3 and their sisters got their shares individualized with respect to their ancestral properties covered under Ex.P4-partition deed dated 17.09.2021. During partition, "A" schedule property mentioned therein fell to the share of R1, while "B" schedule property fell to the share of R2 and R3. While the things stood thus, R1 alienated an extent of 99.6 square yards to R2 and R3 by means of registered sale deed covered under Ex.P1 for a valuable consideration. The recitals in Ex.P1 vividly demonstrate in unmistakable terms that Ex.P1 is supported by valid consideration. Therefore, the plea of P.W.1 that Ex.P1 is devoid of cash consideration is palpably false and no iota of truth in it. Besides the aforementioned property, R1 has land ad-measuring 115 square yards and which is the valuable property and the petitioner has profound knowledge regarding its existence. It is well neigh settled that when other properties are available for recovery of amount, the petition under Section 9 of Provincial Insolvency of Act is not maintainable. R2 and R3 are the bonafide purchasers for consideration and not a malafide purchasers. P.W.1 has immense knowledge regarding the development agreement and the construction of permanent structures in the petition schedule property covered under Ex.R1. Therefore, the petition sans any merit and it is liable to the dismissed.

Point :

08. Now, I am setting forth the scope of controversy under different heads which are stated below.

Is there any pressing reason which holds back R1 not to get into the witness box to testify about the payment of consideration covered under Ex.P1 sale deed dated 17.09.2021 to R2 to R3 ? and his absention into the witness box, the presumption gets activated that R1 to R3 put up a collective front and pressed into service Ex.P1 in order to avoid the debt covered under the promissory note dated 16.10.2019 ?

09. In this litigious backdrop, it is profitable for me to revisit the judgment of Hon'ble Supreme Court reported in **AIR 1999 SC 1411 in between Vidyadhar v. Manikrao and others**. The principle of law which could culled out from the aforementioned judgment is that when the party to the proceedings does not enter into the witness box to testify the facts which are asserted in the pleadings, the adverse inference comes into play that his/her case is not having any merit.

Now, the case on hand got to be tested on the aforementioned jurisprudential guidance. The 1st respondent received the notice and did not make appearance into the court and consequently, he was set exparte. It is the rule of essential justice that when the party to the lis obstructs or blocks such evidence and adopts a devise to withhold the material evidence from whom the case of the prosecution gets unfolded, the presumption comes into operation that purposefully the witness is withheld so that the truth would get exposed. Therefore, the absence of R1 into the witness box casts bad reflection upon the case propounded by R2 and R3.

Whether not mentioning the details of 115 sq.yards of site stands in the name of R1 in Ex.R5 B- schedule appended to the petition suggests that the mind set of R1 is a mischievous mind set ?

10. In this context, I feel it relevant to reproduce the averments made in para-5 of the petition covered under Ex.R5. Para-5 goes on to disclose that **'The petitioner have not alienated any of his properties there months prior to filing of this petition, except the house site an extent of 115 sq.yards located at Autonagar, Tenali which was mortgaged by the petitioner into Kakateeya Bank, Tenali and the said bank hold by the said site. The petitioner has not filed any**

similar petition in any court previously. The respondents threatening the petitioner to discharge his debts with consequences.' However, B-schedule as appended to the petition is blissfully silent about the location of property and its boundaries. In this regard, no plausible explanation was emanated from the side of RW1 and RW2.

Whether the intention of R1 in alienating the petition schedule property in favour of RW1 and RW2 covered under Ex.P1 sale deed dated 17.09.2021 is honourable or he entertained criminal desire in order to defeat the legitimate debt of the petitioner covered under the promissory note dated 16.10.2019, and if so, his case comes within the four corners of Section 53 of the Transfer of Property Act ?

11. As noticed in essence, it is the case of the RW1 and RW2 that they purchased the property covered under Ex.P1 sale deed from his brother i.e., R1 for a valuable consideration and Ex.P1 in vivid terms demonstrates the payment of consideration covered thereunder.

Now, the aforementioned facts are to be put on test on the basis of the material forthcame from the cross examination of RW1.

Question and answers from the testimony of RW1 :

Q.1. Whether it is recited in Ex.P4 with respect to the easementary rights of R1 ?

Ans. I have no idea.

Q.2. Whether it is recited in Ex.P4 that you and R3 have easementary rights ?

Ans. Yes.

Q.3. Are you aware who are the attestors covered under Ex.P4 ?

Ans. I am not aware.

Q.4. Are you aware the debts of R1 on the date of execution of Ex.P4 partition deed ?

Ans. I am not aware.

Q.5. Whether the attestors covered under Ex.P4 and the attestors covered under Ex.P1 are one and the same ?

Ans. Yes.

Certain facts are incapable of direct proof and their existence can be inferred from the circumstances or from the proved facts or from the relevance or from the connection or from the coincidence. The presumptive evidence as well has higher probative value on par with the other modes of

evidence. In the case on hand, Ex.P1 and P4 are executed on the same day without there being any gap of time. RW1 and RW2 have got ample knowledge that R1 is heavily indebted to others and the creditors are pressing for the payment of amount. In such a case, how can I assume or presume that RW2 and RW3 are the bonafide purchasers for consideration. It is proverbial that the witnesses may tell lie, but the circumstances do not and they speak as it is. It appears that RW1 has been making hectic efforts to screen the petition schedule property from being sold in the execution of decree which is passed in favour of PW1 covered under Ex.P3. Anticipating the litigation, R1 alienated the property in favour of RW1 and RW2 covered under Ex.P1 sale deed. Therefore, from these attended circumstances, the conclusion is irresistible that the transaction covered under Ex.P1 is a fraudulent transfer and it is hit by Section 53 the Transfer of Property Act and R1 committed an act of insolvency.

Whether RW1 and RW2 produced any substantive competent proof to show that R1 owns and possesses land admeasuring 115 sq.yards ?

12. The cardinal rule of law of evidence is that in all cases best evidence has to be produced, production of best evidence is the rule and the proof never fall short of excellence in standard. The evidence is the instrument through which the court gets convinced regarding the existence or non-existence of fact-in-issue. In the matter at hand, RW1 and RW2 did not produce any positive and dependable proof to show that R1 has land admeasuring 115 sq.yards situated in Autonagar, Tenali.

13. From the aforementioned premised reasons, the situation which is obtained is that RW1 alienated the property in favour of R2 and R3 with a criminal design to avoid the debt of PW1. Thus, the case of R1 falls within the fold of Section 6 of the Provincial Insolvency Act.

14. In the result, this petition bears merit and accordingly, it is allowed by adjudicating the first respondent as an Insolvent. The period of discharge is one year from the date of this Order. The petitioner is at liberty to move an application after compliance of Sec.45 to 50 and 54-A of the Provincial Insolvency Act to annul the transfer of immovable property under Sec.53 and 54 or 4 of the Said Act. The petition schedule property is vested with the

receiver. The office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by Steno, corrected and pronounced by me in the open Court, this the 1st day of March, 2024).

SHAIK ABDUL SHAREEF,
Addl. Civil Judge (Senior Division,
Tenali.

Appendix of Evidence
Witnesses Examined

For Petitioner:

P.W.1 -M.Sivanarayana Murthy

For Respondent:

R.W.1 - Tadiparthi Sankara Rao

R.W.2 - Tadiparthi Venkata Gopal

Exhibits Marked

For Petitioner:

Ex.P1 is certified copy of sale deed executed by 1st respondent in favour of R2 and R3 dated 17.09.2021.

Ex.P2 is office copy of legal notice dated 11.12.2021 issued to R1 to R3 along with postal receipts.

Ex.P3 is certified copy of decree and judgment in O.S.789/2021 dated 04.05.2022 filed by PW1 against 1st respondent.

Ex.P4 is the partition deed dated 17.09.2021.

For Respondents:

Ex.R1 is the certified copy of the registered development agreement -cum-GPA executed in between Tadiparthi Sankara Rao, Tadiparthi Venkata Gopal, Grandi Visweswara Rao, Gaddipati Omprakash.

Ex.R2 is the SBI Bank Statement of the 2nd respondent dated 25.07.2022.

Ex.R3 is the bank statement of HDFC Bank, Tenali pertaining to 3rd respondent dated 25.07.2022.

Ex.R4 is the office copy of the reply notice dated 06.12.2021 got issued by R2 to the petitioner.

Ex.R5 is the certified copy of the petition in I.P.No.68/2022.

Ex.R6 is the certified copy of the registered sale deed dated 20.05.2009 executed by Vaka China Venkateswarlu in favour of Tadiparthi Sri Ram Murthy.

SHAIK ABDUL SHAREEF,
Addl. Civil Judge (Senior Division,
Tenali.

[Dis No.277.

In the Court of the Hon'ble Addl. Senior Civil Judge,

TENALI

Cr. I.P.No. 8/2021

Movvala Siva Narayana Murthy

.. Petitioner

Vs.

Tadiparthi Sri Rama Murthy & others

.. Respondents

schedule filed on behalf of the Petitioner.

Guntur District, Tenali Regn. Dist. Tenali S.R.O.
Tenali Municipal Town Survey, 2nd ward, 12th block,
T.S.No. 360 - 0-06 cents, bounded by --

East: Bandi Haranadh property abutting this
property boundary wall

South: Tadiparthi Sukumar property abutting
this property wall

West: Property of respondents 2 and 3

North: Tadiparthi Sri Vithal boundary wall

Within these boundaries, an extent of 99-16 Sq.yds.
or 82-90 Sq.mts. of residential site with constru-
ctions, etc. therein - with all easementary rights,
etc.

Advocate for Petitioner.

Petitioner

I do hereby declare that the facts stated are
true to the best of my knowledge, information, and
belief.

Tenali,

D/14-12-2021

Petitioner.

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE (SENIOR DIVISION)
TENALI**

Friday, this the 1st day of March, 2024

I.P.No.09 of 2022

Between:

Mallemoggala Sujana, W/o.Hanumantharao, aged about 52 years, Hindu,
Housewife and residing at H.No.14-29-25, Ravivari Street, 3rd lane, Morrispet,
Tenali - 2, Tenali JCJC.

....Petitioner

And

1. Tadiparthi Srirama Murthy, S/o.Nagendram, aged about 50 years, Hindu,
Business - Bhavani Cosmetics, H.No.7-28-86, Anjaneyapantulu Street,
Ganganammampet, Tenali, Tenali JCJC.

2. Tadiparthi Sankara Rao, S/o.Nagendram, aged about 58 years, Hindu,
Business, r/o.H.No.40-5/4-6, Block No.3, Flat No.322, Smitha Apartments,
Venkateswarapuram, Vijayawada, Vijayawada JCJC.

3. Tadiparthi Venkata Gopal S/o.Nagendram, aged about 52 years, Hindu,
Business, R/o.H.No.14-10-21, Sivalayam Street, Morrispet, Tenali - 522 202.

....Respondents

This petition came before me on 26.02.2024 for hearing in the presence of Sri G.Rambabu garu, Advocate for the Petitioner and Sri G.Jayaramakrishna garu, Advocate for the respondent 2 and 3 and respondent No.1 remained exparte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

:: O R D E R ::

1. This petition is filed by the petitioner against the respondents under Section 6(ib)(if) and 9 of Provincial Insolvency Act a) to set aside the registered sale deed 4079/2021 of Tenali SRO, dated 17.09.2021 executed by 1st respondent in favour of respondents 2 and 3 in respect of the petition schedule property b) to adjudicate the 1st respondent as insolvent and vest the petition schedule property in official receiver for administration and costs of the petition.

2. **The case of the petitioner and the respondent in a narrow compass which is as follows:**

That the petitioner, by name Mallemoggala Sujana states in the petition that the 1st respondent borrowed an amount of Rs.2,00,000/- on 01.02.2020 from her. Evidencing the payment, he executed promissory note on the same day in her favour. In spite of several requests, he did not choose to pay

the amount. She came to learn that the first respondent executed a nominal registered sale deed dated 17.09.2021 in favour of the 2nd and 3rd respondents in order to avoid her debt. Therefore, the petition be allowed.

3. Refuting the averments made in the petition, the 1st and 2nd respondents filed counter and interalia maintains that they are the bonafide purchasers for consideration. Therefore, this petition be dismissed.

4. Basing on the above factual score the following debatable point that germane for consideration is :

1) Whether the 1st respondent committed an act of insolvency and thus, she is declared as an insolvent ?

2) Whether the petition schedule property can be given to the custody of the Officer Receiver, Guntur for administration ?

3) Whether the alienation covered under the sale deed dated 17.09.2021 is liable to be set aside ?

4) To what relief ?

05. That the petitioner, Sri Mallemoggala Sujana filed proof affidavit in lieu of chief examination and reiterated by and large all the averments made in the petition and in order to buttress her contention got herself examined as P.W.1, and got Ex.P1 to P4 marked. The 2nd respondent in order to fortify his contention filed proof affidavit and got himself examined as RW1 and got Ex.R1 to R5 marked. R3 got himself examined as RW2 and nothing was marked on his behalf. After receiving summons, R1 did not make appearance and consequently, he is set exparte.

06. On the aforementioned evidential backdrop, it is the larger contention of the learned counsel for the petitioner, Sri. G.Rambabu garu that PW.1 extended her helping hand by parting with the amount covered under Ex.P1 and P2 promissory notes in order to ease himself off from the financial exigencies, however the 1st respondent has no iota of gratitude and made PW.1 to land in litigation. It is the jurisprudential justification that admission dispenses with the proof and admission is the waiver of proof. R1 filed IP.No.68/2022 on the file of this Court, wherein he admits that he borrowed the amount from PW1. P.W.1 is not aware whether R1 has land ad-measuring 115 square yards. It is mentioned in the petition covered under Ex.R5 that

the aforementioned property is under mortgage. In such a case, how does P.W.1 recover the amount covered under Ex.P1 and P2 from R1. The mortgage bank has fair semblance of right over 115 square yards of site. The mindset of R1 is the deadly mindset, and in order to avoid the legitimate debt of PW1, he entertained criminal desire in order to screen the petition schedule property. As a part of his plan, he thoughtfully designed and carefully crafted nominal and sham sale deed covered under Ex.P3 in favour of R2 and R3 who are his own brothers. Merely because, there is a reference with respect to the payment of consideration by way of cheques, no presumption would prevail that Ex.P3 is a document of highest integrity. Ex.P3 is the void document and the court cannot be the venue to enforce the void documents. Therefore, giving stamp of approval to the case of the petitioner is sustainable in law.

07. Resisting the arguments, it is vehemently canvased by the learned counsel for the respondents 2 and 3, Sri G.Jayaramakrishna garu that R1 is none else than the brother of R2 and R3. R1 to R3 and their sisters got their shares individualized with respect to their ancestral properties covered under Ex.P4-partition deed dated 17.09.2021. During partition, 'A' schedule property mentioned therein fell to the share of R1, while 'B' schedule property fell to the share of R2 and R3. While the things stood thus, R1 alienated an extent of 99.6 square yards to R2 and R3 by means of registered sale deed covered under Ex.P3 for a valuable consideration. The recitals in Ex.P3 vividly demonstrate in unmistakable terms that Ex.P3 is supported by valid consideration. Therefore, the plea of P.W.1 that Ex.P3 is devoid of cash consideration is palpably false and no iota of truth in it. Besides the aforementioned property, R1 has land ad-measuring 115 square yards and which is the valuable property and the petitioner has profound knowledge regarding its existence. It is well neigh settled that when other properties are available for recovery of amount, the petition under Section 9 of Provincial Insolvency of Act is not maintainable. R2 and R3 are the bonafide purchasers for consideration and not a malafide purchasers. P.W.1 has immense knowledge regarding the development agreement and the construction of permanent structures in the petition schedule property covered under Ex.R1. Therefore, the petition sans any merit and it is liable to the dismissed.

Point :

08. Now, I am setting forth the scope of controversy under different heads which are stated below.

Is there any pressing reason which holds back R1 not to get into the witness box to testify about the payment of consideration covered under Ex.P3 sale deed dated 17.09.2021 to R2 to R3 ? and his absention into the witness box, the presumption gets activated that R1 to R3 put up a collective front and pressed into service Ex.P3 in order to avoid the debt covered under the promissory notes covered under Ex.P1 and Ex.P2 ?

09. In this litigious backdrop, it is profitable for me to revisit the judgment of Hon'ble Supreme Court reported in **AIR 1999 SC 1411 in between Vidyadhar v. Manikrao and others**. The principle of law which could culled out from the aforementioned judgment is that when the party to the proceedings does not enter into the witness box to testify the facts which are asserted in the pleadings, the adverse inference comes into play that his/her case is not having any merit.

Now, the case on hand got to be tested on the aforementioned jurisprudential guidance. The 1st respondent received the notice and did not make appearance into the court and consequently, he was set exparte. It is the rule of essential justice that when the party to the lis obstructs or blocks such evidence and adopts a devise to withhold the material evidence from whom the case of the prosecution gets unfolded, the presumption comes into operation that purposefully the witness is withheld so that the truth would get exposed. Therefore, the absence of R1 into the witness box casts bad reflection upon the case propounded by R2 and R3.

Whether not mentioning the details of 115 sq.yards of site stands in the name of R1 in Ex.R4 B- schedule appended to the petition suggests that the mind set of R1 is a mischievous mind set ?

10. In this context, I feel it relevant to reproduce the averments made in para 5 of the petition covered under Ex.R4. Para 5 goes on to disclose that **'The petitioner have not alienated any of his properties there months prior to filing of this petition, except the house site an extent of 115 sq.yards located at Autonagar, Tenali which was mortgaged by the petitioner into Kakateeya Bank, Tenali and the said bank hold by the said site.** The petitioner has not filed any

similar petition in any court previously. The respondents threatening the petitioner to discharge his debts with consequences.' However, B-schedule as appended to the petition is blissfully silent about the location of property and its boundaries. In this regard, no plausible explanation was emanated from the side of RW1 and RW2.

Whether the intention of R1 in alienating the petition schedule property in favour of RW1 and RW2 covered under Ex.P3 sale deed dated 17.09.2021 is honourable or he entertained criminal desire in order to defeat the legitimate debt of the petitioner covered under Ex.P1 and P2 promissory notes, and if so, his case comes within the four corners of Section 53 of the Transfer of Property Act ?

11. As noticed in essence, it is the case of the RW1 and RW2 that they purchased the property covered under Ex.P3 sale deed from his brother i.e., R1 for a valuable consideration and Ex.P3 in vivid terms demonstrates the payment of consideration.

Now, the aforementioned facts are to be put on test on the basis of the material forth came from the cross examination of RW1.

Question and answers from the testimony of RW1 :

Q.1. Whether it is recited in Ex.P4 with respect to the easementary rights of R1 ?

Ans. I have no idea.

Q.2. Whether it is recited in Ex.P4 that you and R3 have easementary rights ?

Ans. Yes.

Q.3. Are you aware who are the attestors covered under Ex.P4 ?

Ans. I am not aware.

Q.4. Are you aware the debts of R1 on the date of execution of Ex.P4 partition deed ?

Ans. I am not aware.

Q.5. Whether the attestors covered under Ex.P4 and the attestors covered under Ex.P1 are one and the same ?

Ans. Yes.

Certain facts are incapable of direct proof and their existence can be inferred from the circumstances or from the proved facts or from the relevance or from the connection or from the coincidence. The presumptive

evidence as well has higher probative value on par with the other modes of evidence. In the case on hand, Ex.P3 and P4 are executed on the same day without there being any gap of time. RW1 and RW2 have got ample knowledge that R1 is heavily indebted to others and the creditors are pressing for the payment of amount. In such a case, how can I assume or presume that RW2 and RW3 are the bonafide purchasers for consideration. It is proverbial that the witnesses may tell lie, but the circumstances do not and they speak as it is. It appears that RW1 has been making hectic efforts to screen the petition schedule property from being sold in the execution of decree which is passed in favour of PW1 covered under Ex.P3. Anticipating the litigation, R1 alienated the property in favour of RW1 and RW2 covered under Ex.P3 sale deed. Therefore, from these attended circumstances, the conclusion is irresistible that the transaction covered under Ex.P3 is a fraudulent transfer and it is hit by Section 53 the Transfer of Property Act and R1 committed an act of insolvency.

Whether RW1 and RW2 produced any substantive competent proof to show that R1 owns and possesses land admeasuring 115 sq.yards ?

12. The cardinal rule of law of evidence is that in all cases best evidence has to be produced, production of best evidence is the rule and the proof never fall short of excellence in standard. The evidence is the instrument through which the court gets convinced regarding the existence or non-existence of fact-in-issue. In the matter at hand, RW1 and RW3 did not produce any positive and dependable proof to show that R1 has land admeasuring 115 sq.yards situated in Autonagar, Tenali.

13. From the aforementioned premised reasons, the situation which is obtained is that RW1 alienated the property in favour of R2 and R3 with a criminal design to avoid the debt of PW1. Thus, the case of R1 falls within the fold of Section 6 of the Provincial Insolvency Act.

14. In the result, this petition bears merit and accordingly, it is allowed by adjudicating the first respondent as an Insolvent. The period of discharge is one year from the date of this Order. The petitioner is at liberty to move an application after compliance of Sec.45 to 50 and 54-A of the Provincial Insolvency Act to annul the transfer of immovable property under Sec.53 and

54 or 4 of the Said Act. The petition schedule property is vested with the receiver. The office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by Steno, corrected and pronounced by me in the open Court, this the 1st day of March, 2024)

SHAIK ABDUL SHAREEF,
Addl. Civil Judge (Senior Division,
Tenali.

Appendix of Evidence
Witnesses Examined

For Petitioner:

P.W.1 - Mallemoggala Sujana

P.W.2 - Mallemoggala Hanumantha Rao

For Respondent:

R.W.1 - Tadiparthi Sankara Rao

R.W.2 - Tadiparthi Venkata Gopal

Exhibits Marked

For Petitioner:

Ex.P1 is 'A' promissory note executed by 1st respondent in favour of PW1 dated 01.02.2020.

Ex.P2 is 'B' promissory note executed by 1st respondent in favour of PW1 dated 01.07.2021.

Ex.P3 is registered extract of the registered sale deed vide Doc.No.4079/2021 dated 17.09.2021 of Tenali SRO executed by 1st respondent in favour of respondents 2 and 3.

Ex.P4 is partition deed dated 17.09.2021.

For Respondents:

Ex.R1 is the certified copy of the registered development agreement-cum-GPA executed in between Tadiparthi Sankara Rao, Tadiparthi Venkata Gopal, Grandi Visweswara Rao, Gaddipati Omprakash.

Ex.R2 is the SBI bank statement of the 2nd respondent dated 25.07.2022.

Ex.R3 is the Bank statement of HDFC Bank, Tenali pertaining to 2rd respondent dated 25.07.2022.

Ex.R4 is the certified copy of the petition in I.P.68/2022.

Ex.R5 is the certified copy of the registered sale deed dated 20.05.2009 executed by Vaka China Venkateswarlu in favour of Tadiparthi Sri Ram Murthy.

SHAIK ABDUL SHAREEF,
Addl. Civil Judge (Senior Division,
Tenali.

[Dis No.273.

In the Court of the Hon^{ble} Addl. Senior Civil Judge,

TENALI

Cr. I.P. 9 / 2021

Mallenoggala Sujana

.. Petitioner

Vs.

Tadiparthi Priroma Murthy & others

.. Respondents

Schedule filed on behalf of the Petitioner.

Guntur District, Tenali Regn. Dist. Tenali S.R.O.

Tenali Municipal Town Survey, 2nd ward, 12th block,

T.S.No. 360 - 0-06 cents, bounded by --

East: Bandi Haranadh property abutting the
property boundary wall

South: Tadiparthi Sukumar property abutting
this property boundary wall

West: Property of Respondents 2 and 3

North: Tadiparthi Sri Vithal boundary wall -

Within these boundaries, an extent of 99-16 Sq.yds.

or 82-90 sq.mts. of residential site with con-
structions, etc. therein, with all easementary
rights, etc.

*

Advocate for Petitioner.

Petitioner

I do hereby declare that the facts stated above
are true to the best of my knowledge, information and
belief.

Tenali,

D/15-12-2021.

*

Petitioner.

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE (SENIOR DIVISION) :
TENALI**

Friday, this the 1st day of March, 2024

I.P.No.13 of 2022

Between:

Taneeru Ravi Teja, S/o.Satyanarayana, aged 36 year, Hindu, Cultivatidon and residing at 3rd lane, Ravi Vari Sstreet, Morrispet, Tenali, Tenali JCJC.

....**Petitioner**

And

1. Tadiparthi Srirama Murthy, S/o.Nagendram, aged about 50 years, Hindu, Business - Bhavani Cosmetics, H.No.7-28-86, Anjaneyapantulu Street, Ganganammamet, Tenali, Tenali JCJC.

2. Tadiparthi Sankara Rao, S/o.Nagendram, aged about 58 years, Hindu, Business, r/o.H.No.40-5/4-6, Block No.3, Flat No.322, Smitha Apartments, Venkateswarapuram, Vijayawada, Vijayawada JCJC.

3. Tadiparthi Venkata Gopal S/o.Nagendram, aged about 52 years, Hindu, Business, R/o.H.No.14-10-21, Sivalayam Street, Morrispet, Tenali - 522 202.

....**Respondents**

This petition came before me on 26.02.2024 for hearing in the presence of Sri G.Rambabu garu, Advocate for the Petitioner and Sri G.Jayaramakrishna garu, Advocate for the respondent 2 and 3 and respondent No.1 remained exparte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

:: ORDER ::

1. This petition is filed by the petitioner against the respondents under Section 6(ib)(if) and 9 of Provincial Insolvency Act a) to set aside the registered sale deed 4079/2021 of Tenali SRO, dated 17.09.2021 executed by 1st respondent in favour of respondents 2 and 3 in respect of the petition schedule property b) to adjudicate the 1st respondent as insolvent and vest the petition schedule property in official receiver for administration and costs of the petition.

2. The case of the petitioner and the respondent in a narrow compass which is as follows:

That the petitioner, by name Taneeru Ravi Teja states in the petition that the 1st respondent borrowed an amount of Rs.1,00,000/- on 01.02.2020 from him. Evidencing the payment, he executed promissory note

dt.01.02.2020 in his favour. Inspite of several requests, he did not choose to pay the amount. He came to learn that the first respondent executed a nominal registered sale deed dated 17.09.2021 in favour of the 2nd and 3rd respondent in order to avoid his debt. Therefore, the petition be allowed.

3. Refuting the averments made in the petition, the 1st and 2nd respondent filed counter and interalia maintains that they are the bonafide purchasers for consideration. Therefore, this petition be dismissed.

4. Basing on the above factual score the following debatable point that germane for consideration is :

1) Whether the 1st respondent committed an act of insolvency and thus, she is declared as an insolvent ?

2) Whether the petition schedule property can be given to the custody of the Officer Receiver, Guntur for administration ?

3) Whether the alienation covered under the sale deed dated 17.09.2021 is liable to be set aside ?

4) To what relief ?

05. That the petitioner, Sri Taneeru Ravi Teja filed proof affidavit in lieu of chief examination and reiterated by and large all the averments made in the petition and in order to buttress his contention got himself examined as P.W.1, and got Ex.P1 to P3 marked. The 2nd respondent in order to fortify his contention filed proof affidavit and got himself examined as RW1 and got Ex.R1 to R5 marked. 3rd respondent got himself examined as RW2 and nothing was marked on his behalf. After receiving summons, R1 did not make appearance and consequently, he was set exparte.

06. On the aforementioned evidential backdrop, it is the larger contention of the learned counsel for the petitioner, Sri.G.Rambabu garu that when the 1st respondent was badly tide up with the finance, PW.1 extended his helping hand by parting with the amount covered under Ex.P1 promissory note dated 01.02.2020 in order to ease himself off from the financial exigencies, however the 1st respondent has no iota of gratitude and made PW.1 to land in litigation. It is the jurisprudential justification that admission dispenses with the proof and admission is the waiver of proof. R1 filed IP.No.68/2022 on the file of this Court, wherein he admits that he borrowed the amount from PW1.

P.W.1 is not aware whether R1 has land ad-measuring 115 square yards. It is mentioned in the petition covered under Ex.R4 that the aforementioned property is under mortgage. In such a case, how does P.W.1 recover the amount covered under Ex.P1 from R1. The mortgage bank has fair semblance of right over 115 square yards of site. The mindset of R1 is the deadly mindset, and in order to avoid the legitimate debt of PW1, he entertained criminal desire in order to screen the petition schedule property. As a part of his plan, he thoughtfully designed and carefully crafted nominal and sham sale deed covered under Ex.P2 in favour of R2 and R3 who are his own brothers. Merely because, there is a reference with respect to the payment of consideration by way of cheques, no presumption would prevail that Ex.P2 is a document of highest integrity. Ex.P2 is the void document and the court cannot be the venue to enforce the void documents. Therefore, giving stamp of approval to the case of the petitioner is sustainable in law.

07. Resisting the arguments, it is vehemently canvased by the learned counsel for the respondents 2 and 3, Sri G.Jayaramakrishna garu that R1 is none else than the brother of R2 and R3. R1 to R3 and their sisters got their shares individualized with respect to their ancestral properties covered under Ex.P3-partition deed dated 17.09.2021. During partition, 'A' schedule property mentioned therein fell to the share of R1, while 'B' schedule property fell to the share of R2 and R3. While the things stood thus, R1 alienated an extent of 99.6 square yards to R2 and R3 by means of registered sale deed covered under Ex.P2 for a valuable consideration. The recitals in Ex.P2 vividly demonstrate in unmistakable terms that Ex.P2 is supported by valid consideration. Therefore, the plea of P.W.1 that Ex.P2 is devoid of cash consideration is palpably false and no iota of truth in it. Besides the aforementioned property, R1 has land ad-measuring 115 square yards and which is the valuable property and the petitioner has profound knowledge regarding its existence. It is well neigh settled that when other properties are available for recovery of amount, the petition under Section 9 of Provincial Insolvency of Act is not maintainable. R2 and R3 are the bonafide purchasers for consideration and not a malafide purchasers. P.W.1 has immense knowledge regarding the development agreement and the construction of permanent structures in the petition schedule property covered under Ex.R1. Therefore, the petition sans any merit and it is liable to the dismissed.

Point :

08. Now, I am setting forth the scope of controversy under different heads which are stated below.

Is there any pressing reason which holds back R1 not to get into the witness box to testify about the payment of consideration covered under Ex.P2 sale deed dated 17.09.2021 to R2 to R3 ? and his absention into the witness box, the presumption gets activated that R1 to R3 put up a collective front and pressed into service Ex.P2 in order to avoid the debt covered under the promissory note dated 01.02.2020 ?

09. In this litigious backdrop, it is profitable for me to revisit the judgment of Hon'ble Supreme Court reported in **AIR 1999 SC 1411 in between Vidyadhar v. Manikrao and others.** The principle of law which could culled out from the aforementioned judgment is that when the party to the proceedings does not enter into the witness box to testify the facts which are asserted in the pleadings, the adverse inference comes into play that his/her case is not having any merit.

Now, the case on hand got to be tested on the aforementioned jurisprudential guidance. The 1st respondent received the notice and did not make appearance into the court and consequently, he was set exparte. It is the rule of essential justice that when the party to the lis obstructs or blocks such evidence and adopts a devise to withhold the material evidence from whom the case of the prosecution gets unfolded, the presumption comes into operation that purposefully the witness is withheld so that the truth would get exposed. Therefore, the absence of R1 into the witness box casts bad reflection upon the case propounded by R2 and R3.

Whether not mentioning the details of 115 sq.yards of site stands in the name of R1 in Ex.R4 B- schedule appended to the petition suggests that the mind set of R1 is a mischievous mind set ?

10. In this context, I feel it relevant to reproduce the averments made in para 5 of the petition covered under Ex.R4. Para 5 goes on to disclose that **'The petitioner have not alienated any of his properties there months prior to filing of this petition, except the house site an extent of 115 sq.yards located at Autonagar, Tenali which was mortgaged by the petitioner into Kakateeya Bank, Tenali and the said bank hold by the said site. The petitioner has not filed any similar petition in any court previously. The respondents**

threatening the petitioner to discharge his debts with consequences.' However, B-schedule as appended to the petition is blissfully silent about the location of property and its boundaries. In this regard, no plausible explanation was emanated from the side of RW1 and RW2

Whether the intention of R1 in alienating the petition schedule property in favour of RW1 and RW2 covered under Ex.P2 sale deed dated 17.09.2021 is honourable or he entertained criminal desire in order to defeat the legitimate debt of the petitioner covered under the promissory note dated 01.02.2020, and if so, his case comes within the four corners of Section 53 of the Transfer of Property Act ?

11. As noticed in essence, it is the case of the RW1 and RW2 that they purchased the property covered under Ex.P2 sale deed from his brother i.e., R1 for a valuable consideration and Ex.P2 in vivid terms demonstrates the payment of consideration.

Now, the aforementioned facts are to be put on test on the basis of the material forthcame from the cross examination of RW1.

Question and answers from the testimony of RW1 :

Q.1. Whether it is recited in Ex.P4 with respect to the easementary rights of R1 ?

Ans. I have no idea.

Q.2. Whether it is recited in Ex.P4 that you and R3 have easementary rights ?

Ans. Yes.

Q.3. Are you aware who are the attestors covered under Ex.P4 ?

Ans. I am not aware.

Q.4. Are you aware the debts of R1 on the date of execution of Ex.P4 partition deed ?

Ans. I am not aware.

Q.5. Whether the attestors covered under Ex.P4 and the attestors covered under Ex.P1 are one and the same ?

Ans. Yes.

Certain facts are incapable of direct proof and their existence can be inferred from the circumstances or from the proved facts or from the relevance or from the connection or from the coincidence. The presumptive evidence as well has higher probative value on par with the other modes of

evidence. In the case on hand, Ex.P2 and P4 are executed on the same day without there being any gap of time. RW1 and RW2 have got ample knowledge that R1 is heavily indebted to others and the creditors are pressing for the payment of amount. In such a case, how can I assume or presume that RW2 and RW3 are the bonafide purchasers for consideration. It is proverbial that the witnesses may tell lie, but the circumstances do not and they speak as it is. It appears that RW1 has been making hectic efforts to screen the petition schedule property from being sold in the execution of decree which is passed in favour of PW1 covered under Ex.P3. Anticipating the litigation, R1 alienated the property in favour of RW1 and RW2 covered under Ex.P2 sale deed. Therefore, from these attended circumstances, the conclusion is irresistible that the transaction covered under Ex.P2 is a fraudulent transfer and it is hit by Section 53 the Transfer of Property Act and R1 committed an act of insolvency.

Whether RW1 and RW2 produced any substantive competent proof to show that R1 owns and possesses land admeasuring 115 sq.yards ?

12. The cardinal rule of law of evidence is that in all cases best evidence has to be produced, production of best evidence is the rule and the proof never fall short of excellence in standard. The evidence is the instrument through which the court gets convinced regarding the existence or non-existence of fact-in-issue. In the matter at hand, RW1 and RW3 did not produce any positive and dependable proof to show that R1 has land admeasuring 115 sq.yards situated in Autonagar, Tenali.

13. From the aforementioned premised reasons, the situation which is obtained is that RW1 alienated the property in favour of R2 and R3 with a criminal design to avoid the debt of PW1. Thus, the case of R1 falls within the fold of Section 6 of the Provincial Insolvency Act.

14. In the result, this petition bears merit and accordingly, it is allowed by adjudicating the first respondent as an Insolvent. The period of discharge is one year from the date of this Order. The petitioner is at liberty to move an application after compliance of Sec.45 to 50 and 54-A of the Provincial Insolvency Act to annul the transfer of immovable property under Sec.53 and 54 or 4 of the Said Act. The petition schedule property is vested with the

receiver. The office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by Steno, corrected and pronounced by me in the open Court, this the 1st day of March, 2024)

SHAIK ABDUL SHAREEF,
Addl. Civil Judge (Senior Division,
Tenali.

Appendix of Evidence
Witnesses Examined

For Petitioner:

P.W.1 - Taneeru Ravi Teja

P.W.2 - Mallemoggala Hanumantha Rao

For Respondent:

R.W.1 - Tadiparthi Sankara Rao

R.W.2 - Tadiparthi Venkata Gopal

Exhibits Marked

For Petitioner:

Ex.P1 is promissory note executed by 1st respondent in favour of PW1 dated 01.02.2020 for Rs.1,00,000/-.

Ex.P2 is certified copy of sale deed dated 17.09.2021 executed by R1 in favour of respondent No.2 and 3.

Ex.P3 is the partition deed dated 17.09.2021.

For Respondents:

Ex.R1 is the certified copy of the registered development agreement-cum-GPA executed in between Tadiparthi Sankara Rao, Tadiparthi Venkata Gopal, Grandi Visweswara Rao, Gaddipati Omprakash.

Ex.R2 is the SBI bank statement of the 2nd respondent dated 25.07.2022.

Ex.R3 is the Bank statement of HDFC Bank, Tenali pertaining to 2rd respondent dated 25.07.2022.

Ex.R4 is the certified copy of the petition in I.P.68/2022.

Ex.R5 is the certified copy of the registered sale deed dated 20.05.2009 executed by Vaka China Venkateswarlu in favour of Tadiparthi Sri Ram Murthy.

SHAIK ABDUL SHAREEF,
Addl. Civil Judge (Senior Division,
Tenali.

[Dis No.278.

In the Court of the Hon'ble Addl. Senior Civil Judge,

TENALI

Cr. I.P.No. 13 / 2023

Tenaguru Ravi Teja

.. Petitioner/
Creditor

Vs.

Tadiparthi srirama Murthy
and others

.. Respondents

schedule filed on behalf of the Petitioner.

Guntur District, Tenali Regn. Dist. Tenali S.R.O.
Tenali Municipal Town Survey - 2nd ward, 12th
Block, T.S.No. 360 - 0-05 cents, bounded by —

East: Bandi Haranadh property abutting this
property boundary wall

South: Tadiparthi Sakumar property abutting
this property wall

West: Property of respondents 2 & 3

North: Tadiparthi Sri Vithal boundary wall

Within these boundaries, an extent of 99-16 Sq.
yards or 82-96 Sq.mts. of residential site with con-
structions, etc. therein - with all easementary
rights, etc.

G. Ravi Babu
Advocate for Petitioner.

✓ * *T. Ravi Teja*

Petitioner

I do hereby declare that the facts stated are
true to the best of my knowledge, information and
belief.

Tenali,

D/15-12-2021.

✓ * *T. Ravi Teja*

Petitioner.

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE (SENIOR DIVISION) :
TENALI**

Friday, this the 1st day of March, 2024

I.P.No.14 of 2022

Between:

Bandi Suguna W/o.Rathnakumar, aged 50 years, Hindu, House wife, Residing at 3rd lane, Ravivari Street, Morrispet, Tenali, Tenali JCJC.

....**Petitioner**

And

1. Tadiparthi Srirama Murthy, S/o.Nagendram, aged about 50 years, Hindu, Business - Bhavani Cosmetics, H.No.7-28-86, Anjaneyapantulu Street, Ganganammamet, Tenali, Tenali JCJC.

2. Tadiparthi Sankara Rao, S/o.Nagendram, aged about 58 years, Hindu, Business, r/o.H.No.40-5/4-6, Block No.3, Flat No.322, Smitha Apartments, Venkateswarapuram, Vijayawada, Vijayawada JCJC.

3. Tadiparthi Venkata Gopal S/o.Nagendram, aged about 52 years, Hindu, Business, R/o.H.No.14-10-21, Sivalayam Street, Morrispet, Tenali - 522 202.

....**Respondents**

This petition came before me on 26.02.2024 for hearing in the presence of Sri G.Rambabu garu, Advocate for the Petitioner and Sri G.Jayaramakrishna garu, Advocate for the respondent 2 and 3 and respondent No.1 remained exparte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

:: ORDER ::

1. This petition is filed by the petitioner against the respondents under Section 6(ib)(if) and 9 of Provincial Insolvency Act a) to set aside the registered sale deed 4079/2021 of Tenali SRO, dated 17.09.2021 executed by 1st respondent in favour of respondents 2 and 3 in respect of the petition schedule property b) to adjudicate the 1st respondent as insolvent and vest the petition schedule property in official receiver for administration and costs of the petition.

2. The case of the petitioner and the respondent in a narrow compass which is as follows:

That the petitioner, by name Bandi Suguna states in the petition that the 1st respondent borrowed an amount of Rs.2,00,000/- on 23.07.2021 from her. Evidencing the payment, he executed promissory note on the same day in her favour. In spite of several requests, he did not choose to pay the

amount. He came to learn that the first respondent executed a nominal registered sale deed dated 17.09.2021 in favour of the 2nd and 3rd respondent in order to avoid his debt. Therefore, the petition be allowed.

3. Refuting the averments made in the petition, the 1st and 2nd respondent filed counter and interalia maintains that they are the bonafide purchasers for consideration. Therefore, this petition be dismissed.

4. Basing on the above factual score the following debatable point that germane for consideration is :

1) Whether the 1st respondent committed an act of insolvency and thus, she is declared as an insolvent ?

2) Whether the petition schedule property can be given to the custody of the Officer Receiver, Guntur for administration ?

3) Whether the alienation covered under the sale deed dated 17.09.2021 is liable to be set aside ?

4) To what relief ?

5. That the petitioner, Sri Bandi Suguna filed proof affidavit in lieu of chief examination and reiterated by and large all the averments made in the petition and in order to buttress her contention got herself examined as P.W.1 and examined PW2 and got Ex.P1 to P3 marked. The 2nd respondent in order to fortify his contention filed proof affidavit and got himself examined as RW1 and got Ex.R1 to R5 marked. 3rd respondent got himself examined as RW2 and nothing was marked on his behalf. After receiving summons, R1 did not make appearance and consequently, he was set exparte.

6. On the aforementioned evidential backdrop, it is the larger contention of the learned counsel for the petitioner, Sri. G.Rambabu garu that when the 1st respondent was badly tide up with the finance, PW.1 extended her helping hand by parting with the amount covered under Ex.P1 promissory note dated 23.07.2021 in order to ease himself off from the financial exigencies, however the 1st respondent has no iota of gratitude and made PW.1 to land in litigation. It is the jurisprudential justification that admission dispenses with the proof and admission is the waiver of proof. R1 filed IP.No.68/2022 on the file of this Court, wherein he admits that he borrowed the amount from PW1. P.W.1 is not aware whether R1 has land ad-measuring

115 square yards. It is mentioned in the petition covered under Ex.R4 that the aforementioned property is under mortgage. In such a case, how does P.W.1 recover the amount covered under Ex.P1 from R1. The mortgage bank has fair semblance of right over 115 square yards of site. The mindset of R1 is the deadly mindset, and in order to avoid the legitimate debt of PW1, he entertained criminal desire in order to screen the petition schedule property. As a part of his plan, he thoughtfully designed and carefully crafted nominal and sham sale deed covered under Ex.P2 in favour of R2 and R3 who are his own brothers. Merely because, there is a reference with respect to the payment of consideration by way of cheques, no presumption would prevail that Ex.P2 is a document of highest integrity. Ex.P2 is the void document and the court cannot be the venue to enforce the void documents. Therefore, giving stamp of approval to the case of the petitioner is sustainable in law.

7. Resisting the arguments, it is vehemently canvased by the learned counsel for the respondents 2 and 3, Sri G.Jayaramakrishna garu that R1 is none else than the brother of R2 and R3. R1 to R3 and their sisters got their shares individualized with respect to their ancestral properties covered under Ex.P3-partition deed dated 17.09.2021. During partition, 'A' schedule property mentioned therein fell to the share of R1, while 'B' schedule property fell to the share of R2 and R3. While the things stood thus, R1 alienated an extent of 99.6 square yards to R2 and R3 by means of registered sale deed covered under Ex.P2 for a valuable consideration. The recitals in Ex.P2 vividly demonstrate in unmistakable terms that Ex.P2 is supported by valid consideration. Therefore, the plea of P.W.1 that Ex.P2 is devoid of cash consideration is palpably false and no iota of truth in it. Besides the aforementioned property, R1 has land ad-measuring 115 square yards and which is the valuable property and the petitioner has profound knowledge regarding its existence. It is well neigh settled that when other properties are available for recovery of amount, the petition under Section 9 of Provincial Insolvency of Act is not maintainable. R2 and R3 are the bonafide purchasers for consideration and not a malafide purchasers. P.W.1 has immense knowledge regarding the development agreement and the construction of permanent structures in the petition schedule property covered under Ex.R1. Therefore, the petition sans any merit and it is liable to the dismissed.

Point :

8. Now, I am setting forth the scope of controversy under different heads which are stated below.

Is there any pressing reason which holds back R1 not to get into the witness box to testify about the payment of consideration covered under Ex.P2 sale deed dated 17.09.2021 to R2 to R3 ? and his absention into the witness box, the presumption gets activated that R1 to R3 put up a collective front and pressed into service Ex.P2 in order to avoid the debt covered under the promissory note dated 23.07.2021 ?

9. In this litigious backdrop, it is profitable for me to revisit the judgment of Hon'ble Supreme Court reported in **AIR 1999 SC 1411 in between Vidyadhar v. Manikrao and others**. The principle of law which could culled out from the aforementioned judgment is that when the party to the proceedings does not enter into the witness box to testify the facts which are asserted in the pleadings, the adverse inference comes into play that his/her case is not having any merit.

Now, the case on hand got to be tested on the aforementioned jurisprudential guidance. The 1st respondent received the notice and did not make appearance into the court and consequently, he was set exparte. It is the rule of essential justice that when the party to the lis obstructs or blocks such evidence and adopts a devise to withhold the material evidence from whom the case of the prosecution gets unfolded, the presumption comes into operation that purposefully the witness is withheld so that the truth would get exposed. Therefore, the absence of R1 into the witness box casts bad reflection upon the case propounded by R2 and R3.

Whether not mentioning the details of 115 sq.yards of site stands in the name of R1 in Ex.R4 B- schedule appended to the petition suggests that the mind set of R1 is a mischievous mind set ?

10. In this context, I feel it relevant to reproduce the averments made in para 5 of the petition covered under Ex.R4. Para 5 goes on to disclose that **'The petitioner have not alienated any of his properties there months prior to filing of this petition, except the house site an extent of 115 sq.yards located at Autonagar, Tenali which was mortgaged by the petitioner into Kakateeya Bank, Tenali and the said bank hold by the said site. The petitioner has not filed any similar petition in any court previously. The respondents**

threatening the petitioner to discharge his debts with consequences.' However, B-schedule as appended to the petition is blissfully silent about the location of property and its boundaries. In this regard, no plausible explanation was emanated from the side of RW1 and RW2

Whether the intention of R1 in alienating the petition schedule property in favour of RW1 and RW2 covered under Ex.P2 sale deed dated 17.09.2021 is honourable or he entertained criminal desire in order to defeat the legitimate debt of the petitioner covered under the promissory note dated 23.07.2021, and if so, his case comes within the four corners of Section 53 of the Transfer of Property Act ?

11. As noticed in essence, it is the case of the RW1 and RW2 that they purchased the property covered under Ex.P2 sale deed from his brother i.e., R1 for a valuable consideration and Ex.P2 in vivid terms demonstrates the payment of consideration.

Now, the aforementioned facts are to be put on test on the basis of the material forthcame from the cross examination of RW1.

Question and answers from the testimony of RW1 :

Q.1. Whether it is recited in Ex.P3 with respect to the easementary rights of R1 ?

Ans. I have no idea.

Q.2. Whether it is recited in Ex.P3 that you and R3 have easementary rights ?

Ans. Yes.

Q.3. Are you aware who are the attestors covered under Ex.P3 ?

Ans. I am not aware.

Q.4. Are you aware the debts of R1 on the date of execution of Ex.P3 partition deed ?

Ans. I am not aware.

Q.5. Whether the attestors covered under Ex.P3 and the attestors covered under Ex.P1 are one and the same ?

Ans. Yes.

Certain facts are incapable of direct proof and their existence can be inferred from the circumstances or from the proved facts or from the relevance or from the connection or from the coincidence. The presumptive evidence as well has higher probative value on par with the other modes of

evidence. In the case on hand, Ex.P2 and P3 are executed on the same day without there being any gap of time. RW1 and RW2 have got ample knowledge that R1 is heavily indebted to others and the creditors are pressing for the payment of amount. In such a case, how can I assume or presume that RW2 and RW3 are the bonafide purchasers for consideration. It is proverbial that the witnesses may tell lie, but the circumstances do not and they speak as it is. It appears that RW1 has been making hectic efforts to screen the petition schedule property from being sold in the execution of decree which is passed in favour of PW1 covered under Ex.P1. Anticipating the litigation, R1 alienated the property in favour of RW1 and RW2 covered under Ex.P2 sale deed. Therefore, from these attended circumstances, the conclusion is irresistible that the transaction covered under Ex.P2 is a fraudulent transfer and it is hit by Section 53 the Transfer of Property Act and R1 committed an act of insolvency.

Whether RW1 and RW2 produced any substantive competent proof to show that R1 owns and possesses land admeasuring 115 sq.yards ?

12. The cardinal rule of law of evidence is that in all cases best evidence has to be produced, production of best evidence is the rule and the proof never fall short of excellence in standard. The evidence is the instrument through which the court gets convinced regarding the existence or non-existence of fact-in-issue. In the matter at hand, RW1 and RW3 did not produce any positive and dependable proof to show that R1 has land admeasuring 115 sq.yards situated in Autonagar, Tenali.

13. From the aforementioned premised reasons, the situation which is obtained is that RW1 alienated the property in favour of R2 and R3 with a criminal design to avoid the debt of PW1. Thus, the case of R1 falls within the fold of Section 6 of the Provincial Insolvency Act.

14. In the result, this petition bears merit and accordingly, it is allowed by adjudicating the first respondent as an Insolvent. The period of discharge is one year from the date of this Order. The petitioner is at liberty to move an application after compliance of Sec.45 to 50 and 54-A of the Provincial Insolvency Act to annul the transfer of immovable property under Sec.53 and 54 or 4 of the Said Act. The petition schedule property is vested with the receiver. The office is directed to communicate a copy of this order to the

Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by Steno, corrected and pronounced by me in the open Court, this the 1st day of March, 2024)

SHAIK ABDUL SHAREEF,
Addl. Civil Judge (Senior Division,
Tenali.

Appendix of Evidence
Witnesses Examined

For Petitioner:

P.W.1 - Bandi Suguna

P.W.2 - Mallemoggala Hanumantha Rao

For Respondent:

R.W.1 - Tadiparthi Sankara Rao

R.W.2 - Tadiparthi Venkata Gopal

Exhibits Marked

For Petitioner:

Ex.P1 is promissory note executed by 1st respondent in favour of PW1 dated 23.07.2021.

Ex.P2 is Registered extract of registered sale deed vide Doc.No.4079/2021 dated 17.09.2021 executed by R1 in favour of respondent No.2 and 3.

Ex.P3 is the partition deed dated 17.09.2021.

For Respondents:

Ex.R1 is the certified copy of the registered development agreement-cum-GPA executed in between Tadiparthi Sankara Rao, Tadiparthi Venkata Gopal, Grandi Visweswara Rao, Gaddipati Omprakash.

Ex.R2 is the SBI bank statement of the 2nd respondent dated 25.07.2022.

Ex.R3 is the Bank statement of HDFC Bank, Tenali pertaining to 2rd respondent dated 25.07.2022.

Ex.R4 is the certified copy of the petition in I.P.68/2022.

Ex.R5 is the certified copy of the registered sale deed dated 20.05.2009 executed by Vaka China Venkateswarlu in favour of Tadiparthi Sri Ram Murthy.

SHAIK ABDUL SHAREEF,
Addl. Civil Judge (Senior Division,
Tenali.

[Dis No.276.

In the Court of the Hon'ble Addl. Senior Civil Judge,

TENALI

Cr. I.P.No. 16/2021

Bandi Suguna

.. Petitioner

Vs.

Tadiparthi Srirama Murthy
and others

.. Respondents

Schedule filed on behalf of the Petitioner.

Guntur District, Tenali Regn. Dist. Tenali S.R.O.
Tenali Municipal town survey, 2nd Ward, 12th Block,
T.S.No. 360 - 0-06 cents - bounded by --

East: Bandi Haranadh property abutting the
property boundary wall -

South: Tadiparthi Sukumar property abutting
this property boundary wall

West: Property of respondents 2 and 3

North: Tadiparthi Sri Vithal boundary wall

Within these boundaries, an extent of 99-16 Sq.
yards or 82-90 Sq.mts. of residential site with
constructions, etc. therein, with all easementary
rights, etc.

Advocate for Petitioner.

Petitioner

I do hereby declare that the facts stated are
true to the best of my knowledge, information and
belief.

Tenali,

D/15-12-2021.

Petitioner.

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE (SENIOR DIVISION) :
TENALI**

Wednesday, this the 6th day of March, 2024

I.P.No.26 of 2019

Between:

Bommu Dhanalakshmi S/o.Venkateswarlu, Properties, aged about 55 years,
Hindu, R/o.# 1-60, Chakrayapalem village, Kollipara Mandal, Guntur District.

....Petitioner

And

1. Chandu Prasada Rao, s/o.Veeraiah, Hindu, aged about 50 years,
R/o.D.No.1-69, Chakrayapalem village, Kollipara Mandal, Guntur District.

2. Chandu Harish Kumar, S/o.Prasada Rao, Hindu, aged about 20 years,
R/o.D.No.1-69, Chakrayapalem village, Kollipara Mandal, Guntur District.

3. Gayam Vamma W/o.Narayana Reddy, Hindu, aged about 65 years,
r/o.D.No.9-53, Chinaparimi village, Tsundur Mandal, Guntur District.

....Respondents

This petition came before me on 05.03.2024 for hearing in the presence of Sri B.Vijaya Kumar garu, Advocate for the Petitioner and Sri P.J.Reddy garu, Advocate for the respondent No. 3 and respondent No.1 and 2 remained *exparte* and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

:: ORDER ::

01. This petition is filed by the petitioner against the respondents under Section 6(ib), 9(c) and 13(b) of Provincial Insolvency Act a) to adjudicate the 1st respondent as insolvent b) vest the petition schedule property in official receiver, Guntur for administration c) to direct the official receiver to apply under Section 53 and 54 of Provincial Insolvency Act after 1st respondent is adjudicated as insolvent and set aside the alienation of registered sale deed Doc.No.1377/2019 of SRO, Tenali West, dated 14.06.2019 and costs of the petition.

02. The case of the petitioner and the respondents in a narrow compass which is as follows:

That the petitioner, by name Bommu Dhanalakshmi states in the petition that the 1st respondent borrowed an amount of Rs.10,00,000/- on 27.06.2018 from her for purchasing the land. Evidencing the payment, he executed promissory note on the same day in her favour. In spite of several requests, he did not choose to pay the amount. She came to learn that the

first respondent executed a registered sale deed dated 14.06.2019 vide Doc.No.1377/2019 of SRO, Tenali (west) in favour of 3rd respondent in order to avoid her debt. Therefore, the petition be allowed.

03. Refuting the averments made in the petition, the 3rd respondent filed counter and interalia maintains that he is the bonafide purchaser for valuable consideration and the petitioner colluded with the respondents 1 and 2 only to make wrongful loss to him. Therefore, this petition be dismissed.

04. Basing on the above factual score the following debatable point that germane for consideration is :

1) Whether the 1st respondent committed an act of insolvency and thus, he is declared as an insolvent ?

2) Whether the petition schedule property can be given to the custody of the Officer Receiver, Guntur for administration ?

3) Whether the alienation covered under the sale deed dated 14.06.2019 is liable to be set aside ?

4) To what relief ?

05. That the petitioner, Smt.Bommu Dhanalakshmi filed proof affidavit in lieu of chief examination and reiterated by and large all the averments made in the petition and in order to buttress her contention got herself examined as P.W.1, and got Ex.P1 and P2 marked. One Bommasani Veera Raghavaiah filed his proof affidavit and examined as PW2, but his evidence is eschewed. After receiving summons, R1 and R2 did not make appearance and consequently, they were set exparte. R3 did not enter into witness box nor marked any document on his behalf.

06. R1 and R2 are remained exparte. R3 filed counter but failed to adduce any evidence on his behalf.

Point Nos.1 to 4:

07. PW1 testifies in her proof affidavit with respect to the borrowal of the amount covered under Ex.P1 by the 1st respondent and alienating the petition schedule property in favour of R3 with intend to defeat or delay the legitimate claim of her. The unchallenged evidence of PW1 coupled with Ex.P1 and P2 amply prove that the 1st respondent committed act of insolvency as envisaged under Section 6(ib) and 9(c) of Provincial Insolvency

Act.

08. In the result, this petition bears merit and accordingly, it is allowed by adjudicating the first respondent as an Insolvent. The period of discharge is one year from the date of this Order. The petitioner is at liberty to move an application after compliance of Sec.45 to 50 and 54-A of the Provincial Insolvency Act to annul the transfer of immovable property under Sec.53 and 54 or 4 of the Said Act. The petition schedule property is vested with the receiver. The office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by Steno, corrected and pronounced by me in the open Court, this the 6th day of March, 2024)

SHAIK ABDUL SHAREEF,
Addl. Civil Judge (Senior Division,
Tenali.

Appendix of Evidence
Witnesses Examined

For Petitioner:

P.W.1 -Bommu Dhanalakshmi
PW2 - Bommasani Veera Raghavaiah (Eschewed)

For Respondent:

None

Exhibits Marked

For Petitioner:

Ex.P1 is promissory note dated 27.06.2018 executed by the 1st respondent in favour of PW1.

Ex.P2 is registration extract sale deed dated 14.06.2019 executed by R1 and R2 in favour of R3.

For Respondents:

Nil

SHAIK ABDUL SHAREEF,
Addl. Civil Judge (Senior Division,
Tenali.

[Dis No.321.

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
:: TENALI.**

CREDITOR I.P.No. 26/2019.

Between:

Bommu Dhanalakshmi .. Petitioner.

And

1. Chandu Prasada Rao

2. Chandu Harish Kumar

3. Gayam Varamma

.. Respondents

SCHEDULE FILED ON BEHALF OF THE PETITIONER

Guntur District, Tenali Reg. Dist. Kollipara Sub Dist. Kollipara Mandal, Davuluru Village Area, D.No. 43/4 an extent of Ac.1-02 ^{1/2} cents out of that an extent of Ac. 0-25 cents, D.No.43/2 an extent of Ac.0-25 cents total extent of 0-50cents of wet land bounded by:

East	: Land of Chandu Kotesara Rao
South	: Land of Chandu Hareesh
West	: Land of Chandu Vani Kumari
North	: Land of BodjettY Ramarao

Within the above four boundaries an extent of Ac.0-50 cents of wet land

Advocate for petitioner.

LTI of Bommu Dhanalakshmi
Petitioner.

I do hereby declare that the facts stated above are true to the best of my knowledge, information and belief.

Tenali,
Dt: - 08- 2019

LTI of Bommu Dhanalakshmi
Petitioner.

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
:: TENALI.**

CREDITOR I.P.No. 26/2019.

Between:

Bommu Dhanalakshmi .. Petitioner.

And

Chandu Prasada Rao and others .. Respondents

AFFIDAVIT FILED BY THE PETITIONER U/s.139 OF CPC

I, Bommu Dhanalakshmi S/o Venkateswarlu, Properties, aged about 55 years, Hindu, R/o. # 1-60, Chakrayapalem Village, Kollipara Mandal, Guntur District, do hereby solemnly affirm and state as follows on oath:

- 1) It is humbly submitted that respondents 1 & 2 are father and son and 3rd respondent is so-called purchaser of the petition schedule property respectively. The respondents 1 to 3 are close associates. The petition schedule property is an total extent of Ac.0-50 cents of wet land situated in D.No.43/4, and 43/2, Davuluru Village, Kollipara Mandal, Guntur District within the jurisdiction of this Hon'ble Court.
- 2) The 1st respondent borrowed an amount of Rs.10,00,000/- from me on 27-06-2018 for the purpose of purchasing land and on the same day he executed promissory note at Chakrayapalem in my favour agreeing to repay the same together with interest at the rate of 12% p.a. either to me or to my order on demand.
- 3) Subsequently, in spite of repeated demands made by me personally and through mediators, 1st respondent failed to repay the aforementioned debt due covered under the promissory note dt. 27-06-2018.
- 4) I further submitted that Recently, I came to know that 1st respondents and his son i.e., 2nd respondent got executed a registered sale deed dated 14-06-2019 in respect of the petition schedule property as if, the property mentioned in the schedule has sold to the 3rd respondent. Except the schedule mentioned property, 1st respondent has no other properties. I believe that both the respondents 1 and 2 colluded together with 3rd respondent and brought into existence of the said alleged registered sale deed dated 14-06-2019 document bearing No.1377/2019 of J.S.R.O., Tenali (west) with an evil intention to evade the debts to the creditors of 1st respondent including me. The sale consideration amount shown in the alleged registered sale deed dt.14-06-2019 is very low. The said alleged sale deed is collusive one and does not binding upon me. Even otherwise also all the respondents are liable for discharging the debt due covered under the aforementioned promissory note to me.
- 5) I, therefore, constrained to file this petition to set aside the alienation made by the 1st and 2nd respondents in favour of the 3rd respondent and to adjudicate the 1st respondent as insolvent as he committed act of insolvency covered under the Provincial Insolvency Act.
- 6) I, therefore, prays that the Hon'ble Court may be pleased to pass a decree in my favour and against the respondents for declaring the 1st Respondent as insolvent, to vest the petition schedule property with the Official Receiver, Guntur, for administration, to direct the Official Receiver to apply under Sec.53 and 54 of Provincial Insolvency Act after 1st Respondents is adjudicated as insolvent and set aside the alienation dated 14-06-2019 under registered sale deed document bearing No.1377/2019 of Joint Sub Registrar, Tenali (West) before the Insolvency Court, to award costs of the petition and for such other reliefs as are deemed fit and proper in the circumstances of the case. Else, I suffer loss.

LTI of Bommu Dhanalakshmi

Deponent,

Solemnly affirm and state on oath before me, this the day of August, 2019.

Advocate,

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE (SENIOR DIVISION) :
TENALI**

Thursday, this the 7th day of March, 2024

I.P.No.49 of 2021

Between:

Gorijala Ramamurthy, S/o.Late Kotaiah, Hindu, aged about 66 years, Retd.Employee, residing at D.No.2-36-30, Gandhinagar, Tenali, Guntur District.

....**Petitioner**

And

1. Kamarajugadda Anuradha, W/o.Venkata Subramanyam, Hindu, aged about 57 years, House wife, R/o.D.No.21-20-7/A, Satyanarayana Veedi, Ramalingeswarapet,, Tenali, Guntur District.
2. Kamarajugadda Krishna Mohan, S/o.Venkata Subramanyam, Hindu, aged about 42 years, Employee, presently r/o.H.No.184/A, First Floor, 7th main Sequel Layout, Sahakaranagar, Amurutha Halli, Bangalore (North), Karnataka State.

....**Respondent**

This petition came before me on 05.03.2024 for hearing in the presence of Sri M.Mallikarjuna Rao garu, Advocate for the Petitioner and Sri A.K.V.Raju garu, Advocate for the respondent and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

:: ORDER ::

1. This petition is filed under Section 6(1)(B), 9(c) and 13(b) of Provincial Insolvency Act, a) declaring that the 1st respondent as insolvent ; b)to vest the petition schedule property with the official Receiver, Guntur for administration; c) to direct the Officer Receiver to apply under Section 53 and 54 of Provincial Insolvency Act after first respondent is adjudicated as insolvent and set-aside the alienation dated 02.07.2021 with Doc.No.1395/2021 of SRO, Tenali, before the Insolvency Court ; and for costs of the petition.

2. The case of the petitioner and the respondent in a narrow compass which is as follows:

That the petitioner, by name Gorijala Rama Murthy states in the petition that the 1st respondent borrowed an amount of Rs.10,00,000/- on 10.11.2018 and an amount of Rs.6,00,000/- on 07.05.2019 from him. Evidencing the payment, he executed a hand letter dated 14.06.2021.

Inspite of several requests, he did not choose to pay the amount. He came to learn that the first respondent executed a registered gift deed dated 02.07.2021 in favour of the 2nd respondent in order to avoid his debt. Therefore, the petition be allowed.

3. Refuting the averments made in the petition, the respondents No.1 and 2 filed counter and interalia maintains that the first respondent never borrowed the amounts from the petitioner at any point of time and the hand letter dated 14.06.2021 which is said to have been executed by the 1st respondent is a fabricated document. The 1st respondent executed registered gift deed dated 02.07.2021 in favour of the the 2nd respondent. There is no collusion in between the 1st respondent and the 2nd respondent. Therefore, this petition be dismissed.

4. Basing on the above factual score the following debatable point that germane for consideration is :

1) Whether the 1st respondent committed an act of insolvency and thus, she is declared as an insolvent ?

2) Whether the petition schedule property can be given to the custody of the Official Receiver, Guntur for administration ?

3) Whether the alienation covered under the gift deed dated 02.07.2021 is liable to be set aside ?

4) To what relief ?

5. That the petitioner, Sri Gorigala Rama Murthy filed proof affidavit in lieu of chief examination and reiterated by and large all the averments made in the petition and in order to buttress his contention got himself examined as P.W.1, and got Ex.P1 to P4 marked. The 1st respondent in order to fortify his contention filed proof affidavit and got herself examined as RW1 and got Ex.R1 to R5 marked. R2 did not enter into the witness box nor got marked any document.

6. On the aforementioned evidential backdrop, it is the larger contention of the learned counsel for the petitioner, Sri. M.Mallikarjuna Rao garu that when the 1st respondent was struggling with finance, PW.1 extended his helping hand by parting with the amount covered under Ex.P.1 hand letter in order to bail him out from the financial exigencies, however the 1st

respondent has no amount of goodness and made PW.1 to land in litigation. Merely because, PW1 did not obtain the promissory note from the 1st respondent, it cannot be logically concluded that Ex.P1 is a made up and spurious document. The testimonial assertions of P.W.1 is attempted hard to be assailed, however, nothing infirm is elicited in the cross-examination so as to doubt the integrity of Ex.P.1-hand letter. The mindset of R1 is the criminal mind set and she entertained criminal desire in order to avoid the debt and in order to materialize her intention, she gifted the property covered under Ex.P2 to the 2nd respondent, while the property covered under Ex.P4 was gifted to the wife of the 2nd respondent. Therefore, giving stamp of approval to the case of the petitioner is sustainable in law.

7. Resisting the arguments, it is vehemently canvased by the learned counsel for the respondents 1 and 2, Sri A.Kasiviswanadha Raju garu that there is no privity of contract in between PW1 and RW1 and she is an unfamiliar to PW1. RW1 has no necessity to borrow the amount covered under Ex. P1 and she is a domesticated housewife. The husband of RW1 is gainfully employed and there is no necessity for her to borrow the amount from PW1. The son of PW1 and the son of the 1st respondent are close friends and disputes happened in between them in connection with the monetary deal. In order to wreck vengeance, PW1 who is a mischievous person pressed into service Ex.P1 in order to obtain fraudulent profit. There is no jural relationship of debtor and creditor in between PW.1 and the 1st respondent. PW.1 is very weak on financial front and he has no financial resources to part with the amount covered under Ex.P.1. Therefore, the petition is highly misconceived and it is liable to be dismissed.

Point :

8. Now, I am setting forth the scope of controversy under different heads which are stated below.

Whether the case as set out by the petitioner in the petition falls within the fold of Section 6 of Provincial Insolvency Act r/w.53 of the Transfer of Property Act ?

9. In order to throw light on the point, the petitioner heavily relies upon Ex.P2 and Ex.P4 gift deeds. Ex.P2 gift deed reveals that the donee covered thereunder is the elder son of the 1st respondent. While, the donee covered under Ex.P4 is the daughter-in-law of the 1st respondent. Ex.P2 and P4 are executed on 21.07.2021 and 09.08.2021. It appears that they were executed within a gap of below one month. Now, turn to the recitals of Ex.P1 hand

letter. Ex.P1 reveals that it is executed on 14.06.2021.

Certain facts are incapable of direct proof and their existence can be inferred from the circumstances or from the proved facts or from the relevance or from the connection or from the coincidence. The presumptive evidence as well has higher probative value on par with the other modes of evidence. Now, in the matter at hand, Ex.P2 and P4 are transferred subsequent to 14.06.2021. It is not the case of the RW1 that she has health issues and she is suffering from all sorts of ailments. In such a case, where is the impelling and compelling necessity for the 1st respondent to alienate the aforementioned properties in favour of her son and daughter-in-law in a hot - haste. Thus, this circumstance purport to convey a strong message that the intention of RW1 in alienating the property in favour of her son and daughter-in-law is actuated by malice and her intention is not honourable. Admittedly, RW1 has no other properties except the properties covered under Ex.P2 and P4. In order to make Section 6 into operation, it is imperative on the part of the petitioner to establish that the transfer is made with intent to defraud or delay the creditor. In the case on hand, all these components as envisaged under Section 6 read with Section 53 of the Transfer of Property Act are available in full measure. Thus, Ex.P2 and P4 gift deeds are sham, unreal and nominal documents.

The learned counsel for the 1st respondent in order to buttress her contention, relies upon the judicial pronouncement of our Hon'ble High Court reported in **1967 (2) Andhra Weekly Report page 329** in between **Modugulu Sreeramulu v. Perakam Singaiah and others.**

On reading the whole text of the judgment, what I make out is that when the 1st respondent has other properties, the petition under Section 6(1) (b) and 9(c) of the Provincial Insolvency Act, is not maintainable. In the controversy at hand, indisputably, RW1 alienated the petition schedule property covered under Ex.P2 and the other property covered under Ex.P4 which stands in her name in the name of her son and her daughter-in-law. Therefore, this decision has no manner of application to the present factual matrix with full force.

10. From the aforementioned premised reasons, the situation which is obtained is that RW1 alienated the property in favour of R2 and R3 with a criminal design to avoid the debt of PW1. Thus, the case of R1 falls within the fold of Section 6 of the Provincial Insolvency Act.

11. In the result, this petition is allowed, by adjudicating the first respondent as an Insolvent. The period of discharge is one year from the date of this Order. The petitioner is at liberty to move an application after compliance of Sec.45 to 50 and 54-A of the Provincial Insolvency Act to annul the transfer of immovable property under Sec.53 and 54 or 4 of the Said Act. The petition schedule property is vested with the receiver. The office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by Steno, corrected and pronounced by me in the open Court, this the 7th day of March, 2024)

SHAIK ABDUL SHAREEF,
Addl. Civil Judge (Senior Division,
Tenali.

Appendix of Evidence
Witnesses Examined

For Petitioner:

P.W.1 - Gorijala Ramamurthy

For Respondents:

R.W.1 - Kamarajugadda Anuradha

Exhibits Marked

For Petitioner:

Ex.P1 is ~~Ex.P1~~ hand letter dated 14.06.2021 executed by first respondent in favour of the petitioner.

Ex.P2 is certified copy of registered gift deed dated 02.07.2021 executed by 1st respondent in favour of 2nd respondent.

Ex.P3 is registered notice dated 18.09.2021 issued by the petitioner to the respondents 1 and 2 along with postal receipt.

Ex.P4 is registered gift deed executed by the 1st respondent in favour of Kamarajugadda Santhi who is the wife of the 2nd respondent.

For Respondents:

Ex.R1 is office copy of legal notice dated 21.10.2021 issued on behalf of RW1 and on behalf of 2nd respondent to the petitioners along with postal receipt.

Ex.R2 is acknowledgment received from the counsel for the petitioner.

Ex.R3 is certified copy of sale deed executed in favour of RW1 dated 27.06.2018 by Bade Ranga Rao.

Ex.R4 is Encumbrance certificate dated 20.06.2023 obtained from Gram Sachivalayam.

Ex.R5 is the deposition of PW1 in O.S.28/2021.

SHAIK ABDUL SHAREEF,
Addl. Civil Judge (Senior Division,
Tenali.

[Dis No.321.

IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE::TENALI
CREDITOR I.P No. 49/2021

Between:

Gorijala Ramamurthy

...

Petitioner

Vs.

1. Kamarajugadda Anuradha

2. Kamarajugadda Krishna Mohan

...

Respondents

SCHEDULE FILED ON BEHALF OF THE PETITIONER

Guntur District, Tenali Revision District, Tenali Municipal Town, 08th Ward, 7TH Block, T.S No 311 , towards Eastern side Chinravuru village D.No 132-1, out of Ac 1-02 cents gifted property southern side door no. 21-20-6/1 present D.No.21-20-07 is bounded by

East : Kodali Baburao wall 25'-02"
South : Jammalamadaka Punyavathi site 37'-00"
West : Municipal Bazar 24'-06"
North : First respondent 37'-03"

Within these boundaries an extent of 102-04 sq. yards site or 85-61 Sq Mts site with Sq.feet 567 R.C.C GROUND FLOOR, Sq.feet 567 R.C.C First FLOOR , Sq.feet 226 R.C.C Second FLOOR.etc with all easement rights

Adi wpr

G. Ramamurthy

Petitioner

I do hereby declare that the facts stated above are true to the best of my knowledge, information and belief.

Tenali,

Dt. 13-04-2021

G. Ramamurthy

Petitioner